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3 UNITED STATES DISTRICT COURT  
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
5 SAN FRANCISCO DIVISION

6 CENTER FOR BIOLOGICAL DIVERSITY,

Case No. 3:22-cv-00117-JD

7 *Plaintiff,*

8  
9 v.

**[PROPOSED] ORDER**

10 GINA RAIMONDO, in her official capacity  
11 as Secretary of Commerce; and NATIONAL  
MARINE FISHERIES SERVICE,

12 *Defendants.*  
13  
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15 The Court, having considered the parties' cross-motions for summary judgment, and for  
16 good cause shown, hereby:

17 GRANTS the Center for Biological Diversity's Motion for Summary Judgment;

18 DENIES the Federal Defendant's Cross-Motion for Summary Judgment;

19 DECLARES that the National Marine Fisheries Service's December 2021 Marine  
20 Mammal Protection Act Section 101(a)(5)(E), 16 U.S.C. § 1371(a)(5)(E), permit "Taking of  
21 Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations," 86  
22 Fed. Reg. 69,627 (Dec. 8, 2021), for the WA/OR/CA sablefish pot fishery is unlawful. *See* 5  
23 U.S.C. § 706(2). In issuing the permit, the agency employed an improper negligible impact  
24 analysis by failing to consider the impacts of other commercial fisheries, improperly concluded a  
25 take reduction plan for the fishery is in place or is being developed, and failed to rely on the best  
26 available science;

27 VACATES and sets aside the Marine Mammal Protection Act Permit;  
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DECLARES that the National Marine Fisheries Service’s October 26, 2020 “Endangered Species Act (ESA) Section 7(a)(2) Biological and Conference Opinion: Continuing Operation of the Pacific Coast Groundfish Fishery (Reinitiation of consultation #NWR-2012-876) – Humpback whale (*Megaptera novaeangliae*)” is unlawful. *See* 5 U.S.C. § 706(2). The Biological Opinion employs an improper jeopardy analysis, fails to include measures to minimize incidental take, and fails to rely on the best available science;

DECLARES that the National Marine Fisheries Service’s reliance on the Biological Opinion to authorize and manage the WA/OR/CA sablefish pot fishery, including in issuing the Marine Mammal Protection Act Permit, is unlawful. *See* 16 U.S.C. § 1536(a)(2). The National Marine Fisheries Service is in violation of its substantive obligation to ensure that its actions do not jeopardize the Central America or Mexico distinct population segments of humpback whales; and

VACATES and sets aside the Biological Opinion.

DATED: \_\_\_\_\_

HON. JAMES DONATO